IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.116 OF 2005

Rajendra Baburao Sarolkar .. ..Petitioner

Versus

Rajesh Chandrakant Thakkar .. ..Respondent

Mr. V.V.Sawaji i/b P.B.Shah for petitioner

Mr.D.M.Gupte for respondent

CORAM : P.V.KAKADE, J.

DATE : 28TH MARCH, 2006

P.C.:

1. Heard both sides. Perused the record.

2. The petitioner-tenant has filed this petition against the order passed by Adhoc Addl. District Judge, Pune dated 30.10.2004 dismissing the appeal and confirming the judgment and order passed by the trial court decreeing the respondent-plaintiff’s suit for eviction of the

petitioner and handing over vacant possession of the suit premises which consists of one room along with gallery admeasuring 144 sq.ft. out of City Survey No. 108 Kasaba Peth, Pune .

3. The Respondent-landlord filed the suit against the petitioner-tenant for possession of the suit premises which was let out to the petitioner tenant on rent of Rs.100/= per month. The tenancy was commenced from first day of every month and termination of the last date of that month. The Defendant failed to pay the arrears of rent from 1.1.1997 inspite of service of notice and therefore, the suit came to be filed. The petitioner-tenant inter alia, submitting that it was an admitted position that the rent was Rs.100/= per month, after the service of the suit notice the defendant had gone to the plaintiff but it was not accepted and therefore, the defendant deposited the rent in the court and therefore, he was not a defaulter.

. The learned trial judge after hearing both the parties came to the conclusion that the plaintiff had failed to prove that the defendant was defaulter in payment of rent. It was also held that the notice was

legal and valid and as such the plaintiff was held to be entitled for decree of eviction against the defendant.

. The appeal was carried to the appellate Court. The lower appellate court after hearing both the parties came to the conclusion that the findings and reasonings adopted by the trial court were legal and proper and therefore, dismissed the appeal. Hence the present petition.

4. At the outset, it may be noted that both the courts below have recorded concurrent findings to the effect that the suit notice was legal and valid and the defendant was rendered defaulter in payment of rent of more than six months and as such was liable to be evicted from the suit premises. It is further to be noted that in earlier Civil Suit No.840 of 1995, which was also between them, the rent of the suit premiss was fixed at Rs.100/= which was the standard rent which also was inclusive of permitted increases and therefore, there was no dispute whatsoever regarding quantum of rent payable by the petitioner. It was sought to be argued on behalf of the petitioner that the compromise decree was not binding upon him on the ground that certain conditions were not

fulfilled by the landlord. However, perusal of the document of decree, which was made available for my perusal, shows that no condition was attached to the fixation of standard rent and therefore, once the quantum of rent is established to be Rs.100/= inclusive of permitted increases, then there is no reason why the decree should not be confirmed, which is passed by the courts below.

5. Be as it may, the fact remains that the concurrent findings recorded by both the courts below appear to be just, legal and proper, and therefore would brook no interference.

6. In the result, the petition stands dismissed with no order as to costs.

7. At this stage the learned counsel for the petitioner requested for some time to vacate the suit premises. In view of the facts and circumstances, decree shall not be executed for the period of three months on condition that the petitioner shall furnish undertaking to that effect and shall continue to pay rent during the occupancy and also shall pay the arrears of rent, if not

already paid and further shall not create any third party interest during the said period. The undertaking to be furnished by all adult members of the family of the petitioner within two weeks from the date of this order.